

## GUEST COLUMN

# California's emergence as an innovator in international arbitration

By Peter A. Neumann  
and Peter Rosen

Just a few short years ago most parties and practitioners took it on faith that a face-to-face evidentiary hearing in the same room was essential to procedural due process when arbitrating complex international disputes. In the wake of the COVID pandemic, remote video hearings are now widely accepted. Many arbitrators and courts agree there is no fundamental right to be physically present at a hearing and that a remote or virtual hearing qualifies as an “in-person” hearing. Despite its reputation as a stolid, conservative field, international arbitration is in a constant state of evolution in response to market, technological, and other global developments, and importantly, a now pervasive moral and cultural commitment to diversity and inclusion.

A key milestone on California's road to being an international arbitration innovator was a legislative breakthrough. On Jan. 1, 2019, California implemented one of the most welcoming “fly-in, fly-out” (or FIFO) laws of any jurisdiction in the world. By allowing foreign lawyers to represent parties in international commercial arbitration proceedings in the state without any filing, registration, or fee requirements, California fully opened its doors to the global arbitration community. It is

now claiming its rightful place as a cutting-edge hub of international dispute resolution. Home-grown organizations such as the California International Arbitration Council, JAMS International Arbitration and California Arbitration (CalArb) have driven this trend. In addition to leading U.S. ADR institutions such as International Institute for Conflict Prevention & Resolution (CPR), AAA/ICDR, FedArb, and the College of Commercial Arbitrators (CCA), California has attracted the interest and engagement of leading global organizations such as the U.K.-based Chartered Institute of Arbitrators (CI Arb), which has local chapters in both northern and southern California. It is a regular port of call of prominent foreign arbitral institutions such as the Paris-based International Chamber of Commerce (ICC) International Court of Arbitration, Hong Kong International Arbitration Center, Singapore International Arbitration Center, and the Korea Commercial Arbitration Board – International (which maintains a Los Angeles office). California law faculties have demonstrated a long term commitment to international arbitration thought leadership and talent development, including the Pepperdine Caruso School of Law, Straus Institute for Dispute Resolution, USC Gould School of Law Center for Dispute Resolution, UC Law SF (formerly known as Hastings) Center for Negotiation

& Dispute Resolution, UCLA, and University of San Diego. Their graduates have gone on to join leading international arbitration practices in prominent law firms and institutional arbitrator panels worldwide.

Drawing on its deep ties to the global economy and unsurpassed track record of world-changing innovation and creativity, California is already a trend-setter. The Silicon Valley International Mediation and Arbitration Center (SVAMC) is a magnet for many of the world's leading technology dispute neutrals. A recently launched collaboration between the Los Angeles – based Independent Film and Television

Alliance (IFTA) and the International Center for Dispute Resolution (ICDR) provides a set of arbitration rules tailored to the international entertainment industry and a panel of arbitrators who are experts in the international entertainment industry.

From March 13-17, 2023 CalArb and the California Lawyers Association, Litigation Section will assemble prominent arbitrators, counsel, thought-leaders, and institutions from North America, Asia, and Latin America for the second annual California International Arbitration Week (CIAW) to share the latest ideas and innovations in international arbitration. By including numerous in-

**Peter A. Neumann** is an independent arbitrator and adjunct professor of law at the Pepperdine Caruso School of Law, Straus Institute for Dispute Resolution. **Peter Rosen** retired from Latham & Watkins at the end of 2018 and then joined JAMS, where he mediates and arbitrates both international and domestic disputes.



person hybrid panels and events and embracing the concerns of diverse stakeholders, this marquee event will accelerate the emergence of a dynamic international arbitration community in California.

To explore the dynamics of overcoming resistance to change, on March 17 the CIARB North America Branch (CIARB NAB) will present a panel of expert international arbitration practitioners: **Never would I ever . . . Overcoming resistance to innovation in international arbitration**, moderated by David Sharp, current Chair of the CIARB NAB. Amb. David Huebner, past Chair of the CIARB NAB, will set the stage by addressing resistance to adoption of new practices and how to overcome it. Katherine Smith Dedrick, immediate past Chair of the CIARB NAB, will propose the creation of specialized tribunals and processes to resolve claims that would otherwise overwhelm the courts following climate and other disasters. Peter Rosen, formerly a leading international insurance litigator who

gained worldwide recognition in the World Trade Center insurance coverage litigation, will discuss the potential for expansion of AI in the arbitration process. Peter Neumann, current CIARB NAB Los Angeles Chapter Chair will propose a radical leap to the use of AI “Robo-Arbitra-

tors” to resolve crypto asset disputes between retail customers and crypto brokerages and exchanges.

All three proposals aim to increase speed, efficiency, and access to justice while lowering costs. But questions and concerns abound. Where acts or omissions of large corporations or public utilities are key factors in climate disaster

losses, quick and efficient resolution of claims through arbitration is an attractive prospect. But will it circumvent class action litigation in open court that may well be a much more effective deterrent of alleged bad behavior than arguably less effective legislation?

While few would dispute that AI is an important and useful aid in document review and e-discovery, at what point would its use encroach on the adjudicatory functions of arbitrators that parties contracted for? Assuming AI technology is fully capable of evaluating evidence to determine facts and then applying law to those facts, can parties and

other stakeholders be certain that artificial intelligence will be bias free? How can national courts of the New York Convention’s 170 member states be expected to review a “robo” award in annulment or recognition and enforcement proceedings without the aid of expensive experts? Is it not premature to even consider a FINRA – style arbitration regime for crypto disputes when the regulatory framework has yet to be formulated?

Pre- and post- presentation audience polling will help gauge whether or not minds are opening.

Perhaps most importantly, CIAW will foster the international exchange of ideas that is essential to the further development and integration of the international arbitration community. Alignment and convergence of values, principles, and best practices is essential to integrity and universal credibility of the international arbitration system. California is well placed to promote enduring links across nations and peoples in an increasingly fractious world.

**Perhaps most importantly,  
CIAW will foster the international  
exchange of ideas that is essential  
to the further development and  
integration of the international  
arbitration community.**